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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Max Richard Ogas, Jr.,

Petitioner,

vs.

Dora Sheraro, et al.,

Respondents.

) No. CV 07-0607-PCT-SMM (JCG)

) **ORDER**

_____)
Petitioner Max Richard Ogas, Jr., who is confined in the Central Arizona Correctional Facility in Florence, Arizona, has filed a *pro se* Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. He has paid the \$5.00 filing fee. The Court will require an answer to the Petition.

I. Petition

Petitioner was convicted in Coconino County Superior Court, case #CR 1995-0365, of First-Degree Murder, First-Degree Burglary, and Kidnaping and was sentenced to life imprisonment. In his Petition, Petitioner names Dora Sheraro¹ as Respondent and the Arizona Attorney General as an Additional Respondent. Petitioner raises one ground for relief.

_____)
¹ The Court assumes that Petitioner intends to name Dora Schriro, Director of the Arizona Department of Corrections.

1 Petitioner alleges that he was denied effective assistance of counsel. He alleges that
2 he pled guilty because his attorney told Petitioner that if he were convicted, he would
3 probably receive the death penalty, but that if he pled guilty, he would be sent to Arizona
4 State Hospital. He also argues that he should have received a full competency hearing before
5 his plea agreement. He claims that because of his extensive record of mental illness, a
6 competency hearing was scheduled before the plea offer was made; however, after the plea
7 offer was made, Petitioner's mental condition was disregarded. He alleges that his attorney
8 failed to explain the effects of a competency hearing and determination, which significantly
9 affected Petitioner's ability to make an informed decision regarding the plea offer.

10 It is unclear whether Petitioner has exhausted his claims. Even assuming that the
11 exhaustion requirement has not been met, it appears that any unexhausted claim may be
12 procedurally barred. In light of the possibility of procedural bar, a summary dismissal would
13 be inappropriate. See Castille v. Peoples, 489 U.S. 346, 351-52 (1989) (remanding where
14 petitioner failed to exhaust claims and it was not clear whether the claims were procedurally
15 barred). Accordingly, an answer is required. 28 U.S.C. § 2254(a).

16 **II. Warnings**

17 **A. Address Changes**

18 Petitioner must file and serve a notice of a change of address in accordance with Rule
19 83.3(d) of the Local Rules of Civil Procedure. Petitioner must not include a motion for other
20 relief with a notice of change of address. Failure to comply may result in dismissal of this
21 action.

22 **B. Copies**

23 Petitioner must serve Respondents, or counsel if an appearance has been entered, a
24 copy of every document that he files. Fed. R. Civ. P. 5(a). Each filing must include a
25 certificate stating that a copy of the filing was served. Fed. R. Civ. P. 5(d). Also, Petitioner
26 must submit an additional copy of every filing for use by the Court. LRCiv 5.4. Failure to
27 comply may result in the filing being stricken without further notice to Petitioner.
28

1 **C. Possible Dismissal**

2 If Petitioner fails to timely comply with every provision of this Order, including these
3 warnings, the Court may dismiss this action without further notice. See Ferdik v. Bonzelet,
4 963 F.2d 1258, 1260-61 (9th Cir. 1992) (a district court may dismiss an action for failure to
5 comply with any order of the Court).

6 **IT IS ORDERED:**

7 (1) The Clerk of Court must serve a copy of the Petition (Doc. #1) and this Order
8 on Respondent Dora Schriro and the Attorney General of the State of Arizona by certified
9 mail pursuant to Rule 4, Rules Governing Section 2254 Cases.

10 (2) Respondents must answer the Petition within 40 days of the date of service.
11 Respondents must not file a dispositive motion in place of an answer but may file an answer
12 limited to relevant affirmative defenses, including but not limited to, statute of limitations,
13 procedural bar, or non-retroactivity. If the answer is limited to affirmative defenses, only
14 those portions of the record relevant to those defenses need be attached to the answer.
15 Failure to set forth an affirmative defense in an answer may be treated as a waiver of the
16 defense. Day v. McDonough, 126 S. Ct. 1675, 1684 (2006). If not limited to affirmative
17 defenses, the answer must fully comply with all of the requirements of Rule 5 of the Rules
18 Governing Section 2254 Cases.

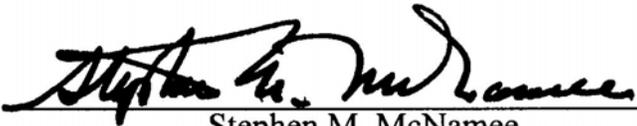
19 (3) Petitioner may file a reply within 30 days from the date of service of the
20 answer.

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(4) This matter is referred to Magistrate Judge Jennifer C. Guerin pursuant to Rules 72.1 and 72.2 of the Local Rules of Civil Procedure for further proceedings and a report and recommendation.

DATED this 3rd day of April, 2007.



Stephen M. McNamee
United States District Judge